



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

FEB 28 2014

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Helen P. Revelas, Plant Manager
Ardagh Glass, Inc.
151 East McCanns Boulevard
Elmira, NY 14903

7005 3110 0000 5947 3092

RE: Notice of Violation - EPA Index No. CAA-02-2014-1302

Dear Ms. Revelas:

The United States Environmental Protection Agency (EPA) issues the enclosed Notice of Violation (NOV) to Ardagh Glass, Inc. (Ardagh), pursuant to Section 113(a)(1) of the Clean Air Act (Act), 42 U.S.C. § 7413(a)(1). The NOV alleges that Ardagh failed to comply with requirements in 40 C.F.R. § 52.21 et seq., entitled "Prevention of significant deterioration of air quality," and with 40 C.F.R. § 60.290 et seq., entitled "Standards of Performance for Glass Manufacturing Plants," among other requirements.

As indicated in the NOV, if you wish to request a conference with EPA to discuss the NOV, you may do so in writing within ten (10) calendar days of your receipt of the NOV. If you have any questions, or would like to schedule the conference provided for in the NOV, please contact Erick R. Ihlenburg, Assistant Regional Counsel, at (212) 637-3250 or ihlenburg.erick@epa.gov.

Sincerely,

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency – Region 2

Enclosure

cc: New York State Department of Environmental Conservation
Region 8
6274 E. Avon-Lima Road
Avon, NY 14414

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

IN THE MATTER OF:

Ardagh Glass, Inc.
Elmira, New York

RESPONDENT

Notice of Violation

CAA-02-2014-1302

Summary

This Notice of Violation (NOV) is issued by the Director of the Division of Enforcement and Compliance Assistance for the United States Environmental Protection Agency (EPA) Region 2, to Ardagh Glass, Inc. (Respondent or Ardagh) (formerly doing business as Anchor Glass Container Corp.), pursuant to Section 113(a)(1) of the Clean Air Act (CAA or the Act), 42 U.S.C. § 7401 et seq. The NOV identifies violations of the "Prevention of significant deterioration of air quality" regulations, 40 C.F.R. § 52.21 et seq. (PSD Regulations), at the Respondent's glass manufacturing facility (the Facility), located at 151 East McCanns Boulevard, Elmira, New York. The PSD Regulations establish preconstruction permitting and ongoing operational requirements for new major stationary sources and for "major modifications" of existing major sources, which are located in areas designated as in attainment with the national ambient air quality standards (NAAQS) promulgated under Section 109 of the Act. Specifically, in this NOV, the Director finds that the Respondent violated the PSD

Regulations by failing to, among other things, apply for and obtain a PSD preconstruction permit for a glass furnace expansion project at the Facility, which resulted in a “significant net emission increase” of nitrogen oxides (NO_x), sulfur dioxides (SO₂) and particulate matter of ten micrometers or less (PM-10), and by failing to install and operate the best available control technology (BACT) with respect to these pollutants. In addition, the Director finds that the Respondent violated the New Source Performance Standards (NSPS) for glass manufacturing facilities at 40 C.F.R. § 60.290 et seq. with respect to the furnace expansion project and increased emissions of particulate matter (PM). The Director also finds that the Respondent failed to incorporate the applicable PSD, BACT and NSPS requirements into its Facility Title V operating permit, in violation of Title V of the Act and of the approved New York State Title V operating permit program.

Statutory and Regulatory Background

PSD and BACT Requirements

All citations in this NOV to 40 C.F.R. Part 52 refer to the PSD Regulations and other provisions that were in effect in January and February of 2002, when the alleged violations began to occur.

1. Section 165(a) of the Act provides, among other things, that no major emitting facility on which construction is commenced after August 7, 1977, may be constructed or modified in any area that is in attainment with the NAAQS, unless:

- a) a preconstruction PSD permit has been issued for the facility;
- b) the proposed permit has been subject to a review in accordance with CAA Section 165, the required analysis has been conducted in accordance with the PSD Regulations, and a public hearing has been held, with opportunity for interested persons to appear and submit written or oral presentations on the air quality

impact of such source, alternatives thereto, control technology requirements, and other appropriate considerations;

- c) the owner/operator of such facility demonstrates, as required pursuant to Section 110(j) of the Act, that emissions from construction or operation of such facility will not cause or contribute to air pollution in excess of any
 - i) maximum allowable increase or maximum allowable concentration for any pollutant in any area to which the PSD Regulations apply, more than one time per year;
 - ii) NAAQS in any air quality control region; or
 - iii) any other applicable emission standard or standard of performance under this chapter;
- d) the proposed facility is subject to the BACT for each pollutant subject to regulation under the Act, emitted from, or which results from such facility;
- e) there has been an analysis of any air quality impacts projected for the area as a result of growth associated with such facility; and
- f) the owner/operator of a major emitting facility for which a permit is required under the PSD Regulations agrees to conduct such monitoring as may be necessary to determine the effect which emissions from any such facility may have, or is having, on air quality in any area which may be affected by emissions from such source.

2. In accordance with Sections 110(a) and 161 of the Act, each state must adopt, and submit to EPA for approval into a state implementation plan (SIP), a plan that contains emission limits and such other measures as may be necessary, as determined under regulations promulgated under Subpart C of Title I of the Act, to prevent significant deterioration of air quality in each region (or portion thereof) designated pursuant to Section 107 of the Act as attainment or unclassifiable.

3. 40 C.F.R. § 52.21(a) provides that the PSD Regulations apply to any SIP which has been disapproved with respect to prevention of significant deterioration of air quality in any portion of any state that is in attainment with the applicable NAAQS.

4. Pursuant to Sections 110 and 161 of the Act, on June 19, 1978, EPA 1) disapproved New York's PSD rules, and 2) incorporated by reference, and made part of the applicable New York implementation plan, the provisions at 40 C.F.R. §§ 52.21(b) through (w). 40 C.F.R. § 52.1689; 43 Fed. Reg. 26410 (June 19, 1978).¹

5. Pursuant to 40 C.F.R. § 52.21(i)(1) of the PSD regulations, no stationary source or modification to which the requirements of § 52.21(j) through (r) apply shall begin actual construction without a permit that states the stationary source will meet those requirements.

6. 40 C.F.R. § 52.21(i)(2) and (3) provide that the requirements of 40 C.F.R. §§ 52.21(j) through (r) are applicable to any major stationary source and any major modification that would be constructed in an area designated under the Act as in attainment with the NAAQS, with respect to each pollutant subject to regulation under the Act.

7. 40 C.F.R. § 52.21(b)(5) defines "stationary source" as any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the Act.

8. 40 C.F.R. § 52.21(b)(1)(i) defines "major stationary source" as, among other things, any stationary source which emits, or has the potential to emit, 250 tons per year (tpy) or more of any air pollutant subject to regulation under the Act.

9. 40 C.F.R. § 52.21(b)(4) defines "potential to emit" as the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, will be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable.

¹ After the alleged violations commenced, EPA approved New York's PSD rules at 6 NYCRR Part 231 into the federally enforceable New York SIP. *See* 75 Fed. Reg. 70140 (Dec. 17, 2010).

10. 40 C.F.R. § 52.21(b)(2)(i) defines “major modification” as any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Act.

11. 40 C.F.R. § 52.21(b)(23)(i) defines “significant,” in reference to a net emissions increase of, or the potential of a source to emit, NO_x^2 or SO_2 , as a rate of emissions that would equal or exceed 40 tons per year (tpy) for either pollutant, and for PM-10, a rate of emissions that would equal or exceed 15 tpy.

12. 40 C.F.R. § 52.21(b)(3) defines “net emissions increase” as the amount by which the sum of the following exceeds zero:

- a) any increase in actual emissions from a particular physical change or change in method of operation at a stationary source; and
- b) any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

40 C.F.R. § 52.21(b)(3)(ii) provides that an increase or decrease in actual emissions is

contemporaneous with the increase from the particular change only if it occurs between:

- a) the date five years before construction on the particular change commences; and
- b) the date that the increase from the particular change occurs.

40 C.F.R. § 52.21(b)(3)(iii) provides that an increase or decrease in actual emissions is

creditworthy only if the EPA has not relied on it in issuing a permit for the source under the PSD regulations, which permit is in effect when the increase in actual emissions from the particular change occurs.

40 C.F.R. § 52.21(b)(3)(v) provides that an increase in actual emissions is creditworthy only

to the extent that the new level of actual emissions exceeds the old level.

² For purposes of this NOV, “ NO_x ” includes nitrogen dioxide (NO_2).

16. 40 C.F.R. § 52.21(b)(3)(vi) provides that a decrease in actual emissions is creditable only to the extent that:

- a) the old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions; it is enforceable as a practical matter at and after the time that actual construction on the particular change begins;
- b) it is federally enforceable at and after the time that actual construction on the particular change begins; and
- c) it has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

17. 40 C.F.R. § 52.21(b)(21)(i) defines “actual emissions” as the actual rate of emissions of a pollutant from an emissions unit, as determined in accordance with 40 C.F.R. § 52.21(b)(21)(ii) through (iv).

18. 40 C.F.R. § 52.21(b)(21)(ii) provides that, in general, actual emissions as of a particular date must be equal to the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. The EPA will allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions must be calculated using the unit’s actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

19. 40 C.F.R. § 52.21(b)(21)(iii) provides that EPA may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

20. 40 C.F.R. § 52.21(b)(21)(iv) provides that for any emissions unit (other than an electric utility steam generating unit as specified in 40 C.F.R. § 52.21(b)(21)(v)), which has not begun normal operations on the particular date, actual emissions equal the potential to emit of the unit

on that date.

21. 40 C.F.R. § 52.21(b)(16) defines “allowable emissions” as the emissions rate of a stationary source calculated using the maximum rated capacity of the source, unless the source is subject to federally enforceable limits which restrict the operating rate, hours of operation, or both, and the most stringent of the following:

- a) the applicable standards in 40 C.F.R. Parts 60 and 61;
- b) the applicable SIP emissions limitation, including those with a future compliance date; or
- c) the emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

22. 40 C.F.R. § 52.21(j)(2) provides for control technology review, in which a new major stationary source located in an attainment area must apply BACT for each pollutant subject to regulation under the Act that it would have the potential to emit in significant amounts.

23. 40 C.F.R. § 52.21(j)(3) provides that where there is a major modification, an owner/operator of the major stationary source must install and operate BACT for each pollutant subject to regulation under the Act for which there is a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which the net emissions increase in the pollutant would occur as a result of the physical change or change in the method of operation in the unit.

24. 40 C.F.R. § 52.21(b)(12) defines “BACT” as an emissions limitation based on the maximum degree of reduction for each pollutant subject to regulation under the Act, which would be emitted from any proposed major stationary source or major modification, which EPA determines, on a case-by-case basis, is achievable for such source or modification through

application of production processes or available methods, systems, and techniques, taking into account energy, environmental, and economic impacts and other costs.

25. 40 C.F.R. § 52.21(k) provides that the owner/operator of a proposed source or modification must perform a source impact analysis and demonstrate that allowable emission increases from the proposed source or modification would not cause or contribute to a violation of any NAAQS in any air quality control region, and that the increase will not cause or contribute to any applicable maximum allowable increase over the baseline ambient air concentration in any area.

26. 40 C.F.R. § 52.21(m) provides that the owner/operator of a proposed major stationary source or major modification must conduct and submit, as part of a PSD permit application, an ambient air quality analysis for each pollutant that the source would have the potential to emit in a significant amount, and/or each pollutant for which the modification would result in a significant net emissions increase.

27. 40 C.F.R. § 52.21(n) provides that, among other things, the owner/operator of the proposed major stationary source or major modification shall submit all information necessary to perform any analysis or make any determination required under the PSD regulations.

28. 40 C.F.R. § 52.21(o) provides that the owner/operator of a proposed major stationary source or major modification shall provide an analysis of the impairment to visibility, soils, and vegetation that would occur as a result of the source or modification, and the air quality impact projected for the area as a result of general commercial, residential, industrial and other growth associated with the source or modification.

29. 40 C.F.R. § 52.21(r)(1) provides that any owner/operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to the PSD

regulations or with the terms of any approval to construct, or any owner/operator of a source or modification subject to the PSD regulations who commences construction after the effective date of the PSD regulations without applying for and receiving approval thereunder, is subject to appropriate enforcement action.

30. 40 C.F.R. § 52.21(r)(3) provides that approval to construct must not relieve any owner/operator of the responsibility to comply fully with applicable provisions of the State implementation plan and any other requirements under local, State, or Federal law.

NSPS Requirements for Glass Manufacturing

31. Section 111 of the Act provides for “standards of performance” for stationary sources of air pollution. Under Section 111(b) of the Act, EPA is required to promulgate such standards for new stationary sources, and under Section 111(d) of the Act, EPA must promulgate procedures for states to submit to EPA, for approval, a plan that establishes standards of performance for existing stationary sources.

32. Section 111(a)(1) of the Act defines “standard of performance” as a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction which EPA determines has been adequately demonstrated.

33. Section 111(e) of the Act prohibits any owner or operator from operating a source in violation of a Section 111 standard of performance that is applicable to the source.

34. On October 7, 1980, EPA promulgated “Standards of Performance for Glass Manufacturing Plants,” 40 C.F.R. § 60.290 et seq. (Glass NSPS). 45 Fed. Reg. 66751, as amended at 65 Fed. Reg. 61759 (Oct. 17, 2000).

35. 40 C.F.R. § 60.290 provides that each glass melting furnace is an affected facility to which the provisions of the Glass NSPS applies, and that each such furnace that commences construction or modification after June 15, 1979, is subject to the requirements of the Glass NSPS.

36. 40 C.F.R. § 60.2 defines “modification” as any physical change in, or change in the method of operation of, an existing facility which increases the amount of any air pollutant (to which a standard applies) emitted into the atmosphere by that facility or which results in the emission of any air pollutant (to which a standard applies) into the atmosphere not previously emitted.

37. 40 C.F.R. § 60.291 defines “glass melting furnace” as a unit comprising a refractory vessel in which raw materials are charged, melted at high temperature, refined, and conditioned to produce molten glass. The unit includes foundations, superstructure and retaining walls, raw material charger systems, heat exchangers, melter cooling system, exhaust system, refractory brick work, fuel supply and electrical boosting equipment, integral control systems and instrumentation, and appendages for conditioning and distributing molten glass to forming apparatuses. The forming apparatuses, including the float bath used in flat glass manufacturing and flow channels in wool fiberglass and textile fiberglass manufacturing, are not considered part of the glass melting furnace.

38. 40 C.F.R. § 60.292 provides that, among other things, on and after the date on which the performance test required to be conducted by § 60.8 is completed, no owner or operator of a glass melting furnace subject to the provisions of the Glass NSPS shall cause PM to be discharged into the atmosphere at emission rates exceeding those specified in § 60.292(a)(1) or (2) of the Glass NSPS.

EPA's Authority to Issue NOV's and to Enforce Applicable Implementation Plans and Title V Operating Permits

39. Section 113(a)(1) of the Act provides, in pertinent part, that whenever the EPA Administrator finds on the basis of any information available to the Administrator that any person has violated or is in violation of any requirement or prohibition of an applicable implementation plan, the Administrator shall notify the person and the State in which the plan applies of such finding. Section 113(a)(1) further provides that 31 days after providing such notice, the EPA Administrator may take various enforcement actions to address the violation(s).
40. Under Section 302(e) of the Act, the term "person" includes an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.
41. Pursuant to EPA Delegation of Authority 7-6-A and EPA Region 2 Delegation of Authority 7-6-A, the authority to make findings of violation and to issue notices of violation under Section 113 of the Act has been delegated to the Director by the EPA Administrator through the Region 2 Regional Administrator.
42. Pursuant to Section 502(a) of the Act, after the effective date of any permit program approved or promulgated pursuant to Title V of the Act, it is unlawful for any person to violate any requirement of a permit issued under Title V of the Act, or to operate a source that is subject to Title V permitting requirements except in compliance with a permit issued by a permitting authority under Title V of the Act.
43. Pursuant to Section 502(d) of the Act, each state is required to develop and submit to EPA a permit program meeting the requirements of Title V of the Act.

44. In accordance with Section 502(d)(1) of the Act, the New York State Department of Environmental Conservation developed and submitted 6 NYCRR Chapter III, Part 201 (Title V Operating Permit Program), to meet the requirements of Title V of the Act and 40 C.F.R. Part 70, promulgated pursuant to Section 502(b) of the Act.
45. EPA granted interim approval of the Title V Operating Permit Program on December 9, 1996, 61 Fed. Reg. 57589 (Nov. 7, 1996), and granted full approval of the Program on February 5, 2002, 67 Fed. Reg. 5216 (Feb. 5, 2002).
46. Pursuant to Section 502(e) of the Act, EPA maintains its authority to enforce Title V operating permits issued by a state, including New York.
47. Pursuant to 6 NYCRR § 201-6.2(d) of the Title V Operating Permit Program, all Title V facility permit applications must include, at a minimum, the information described in § 201-6.2(d)(1) through (12) of the Program.
48. Pursuant to Section 504(a) of the Act, and 6 NYCRR § 201-6.4 of the Title V Operating Permit Program, each Title V operating permit must include, among other things, enforceable emissions limitations and standards to assure compliance with applicable requirements of the Act, including the requirements of the applicable implementation plan.

Findings of Fact

49. The factual findings set forth below are based on an investigation conducted by EPA in accordance with Section 114 of the CAA. The investigation included, among other things, a review of pertinent Facility records, including stack test data, the Facility Title V operating permit, and Respondent's answers to requests for information, dated December 11, 2007 and February 27, 2012.

50. Respondent owns and/or operates the glass manufacturing facility located at 151 East McCanns Boulevard, Elmira, New York (the Facility).
51. The Facility is located in Chemung County, in the Southern Tier West Intrastate Air Quality Control Region, an area which EPA designated as in attainment with the NAAQS for NO_x, SO₂ and PM-10. 40 C.F.R. § 81.333.
52. The Facility is also located in an area that EPA designated as in attainment for the 1-hour ozone NAAQS in effect at the time the violations alleged in this NOV began to occur. 40 C.F.R. § 81.333.
53. The Facility has the potential to emit NO_x, SO₂ and/or PM-10 in amounts greater than 250 tpy.
54. In January and February 2002, Respondent completed construction and commenced operation of an expanded capacity Furnace 2 at the Facility. This construction included a full rebuild, a furnace expansion, an increased metal line, hot and cold end modernization, a batch delivery system modification, a low profile refiner, and replacement of the forming lines and bottling machines, among other changes (Furnace 2 Expansion Project). Respondent's records indicate that the Furnace 2 Expansion Project was intended to increase glass producing capacity of Furnace 2 by approximately 100 tons of glass per day.
55. The Furnace 2 Expansion Project resulted in an increase of NO_x emissions of greater than 40 tpy, an increase of SO₂ emissions of greater than 40 tpy, and an increase in PM-10 emissions of greater than 15 tpy.
56. Prior to commencing construction on the Furnace 2 Expansion Project, and continuing to the present, Respondent has not undergone New Source Review for the Furnace 2 Expansion Project, and has not applied a BACT-level of pollution control for NO_x, SO₂ and PM-10

emissions from Furnace 2.

57. As of the date of this NOV, Respondent has not completed an initial performance test or submitted NSPS notifications to demonstrate compliance with the PM limitations and other requirements of the Glass NSPS.

58. As of the date of this NOV, Respondent has not incorporated relevant PSD, BACT and Glass NSPS requirements into its Facility Title V operating permit.

Conclusions of Law

Based on the Findings of Fact set forth above, EPA reaches the following conclusions of law:

59. Respondent Ardagh is a Delaware corporation authorized to do business in New York. Ardagh previously did business at the Elmira Facility as Anchor Glass Container Corp.

60. Respondent is a "person" as defined by section 302(e) of the Act, 42 U.S.C. § 7602(e).

Violations of Prevention of Significant Deterioration Requirements

61. At all times relevant to this NOV, Respondent owned and/or operated a "major stationary source" of NO_x, SO₂ and/or PM-10, as defined in the PSD Regulations at 40 C.F.R.

§ 52.21(b)(1)(i)(b).

62. The Furnace 2 Expansion Project was a "major modification" under 40 C.F.R.

§ 52.21(b)(2), because it was a physical change in or a change in the method of operation of a major stationary source that resulted in a "significant net emissions increase" of NO_x, SO₂ and PM-10 from a major stationary source. 40 C.F.R. § 52.21(b)(3) and (23)(i).

63. Since at least January or February 2002, Respondent failed to undergo New Source Review with respect to the Furnace 2 Expansion Project, failed to apply for and obtain a valid PSD preconstruction permit for the project, and failed to install, operate and maintain BACT for

Furnace 2's NO_x, SO₂ and PM-10 emissions, in violation of the PSD Regulations and Section 165(a) of the Act.

Violations of New Source Performance Standards

64. The Furnace 2 Expansion Project was a "modification" under 40 C.F.R. § 60.2, because it was a physical change in, or change in the method of operation of, an existing facility which increased the amount of hourly PM emissions from Furnace 2. Respondent is therefore subject to the applicable requirements in 40 C.F.R. § 60.290 et seq. and the NSPS General Provisions.

65. Following the Furnace 2 Expansion Project, Respondent failed to conduct an initial performance test for PM emissions from Furnace 2, and failed submit the required notifications with respect to the Project, in violation of 40 C.F.R. §§ 60.7, 60.8 and 60.290 et seq.

Violations of the Title V Operating Permit Program

66. Since at least 2002, Respondent failed to incorporate all applicable CAA requirements into its Facility Title V operating permit, including, but not limited to, the PSD, BACT and Glass NSPS requirements, and failed to establish appropriate compliance schedules, in violation of Title V of the Act and the Title V Operating Permit Program. 6 NYCRR 201-6.

Enforcement

Section 113(a)(1) of the Act authorizes the EPA to take any of the following actions in response to Respondent's violation(s) of a SIP, after the expiration of 30 days after issuance of a notice of violation:

- issue an order requiring compliance with the requirements or prohibitions of the SIP;
- issue an administrative penalty order in accordance with CAA Section 113(d); or
- bring a civil action in accordance with CAA Section 113(b) for civil penalties and/or injunctive relief.

The amount of civil penalties that may be recovered for violations of the Act and its implementing regulations is set by statute at not more than \$25,000 per day per violation, but has been adjusted pursuant to the Debt Collection Improvement Act, 31 U.S.C. 3701 et seq., to up to \$27,500 per day for each violation that occurs after January 30, 1997 through March 15, 2004, up to \$32,500 per day for each violation that occurs after March 15, 2004 through January 12, 2009, and up to \$37,500 per day for each violation that occurs after January 12, 2009. See 40 C.F.R. Part 19.

Furthermore, for any person who knowingly violates any requirement or prohibition of an applicable implementation plan for more than thirty (30) days after the date of the issuance of an NOV, Section 113(c) of the Act provides for criminal penalties or imprisonment, or both. In addition, under Section 306 of the Act, the regulations promulgated thereunder (40 C.F.R. Part 15), and Executive Order 11738, facilities to be utilized in federal contracts, grants and loans must be in full compliance with the Act and all regulations promulgated pursuant thereto. Violation of the Act may result in the subject facility, or other facilities owned or operated by Respondent, being declared ineligible for participation in any federal contract, grant, or loan program.

Penalty Assessment Criteria

Section 113(e)(1) of the Act states that if a penalty is assessed pursuant to Section 113 or 304(a) of the Act, the Administrator or the court, as appropriate, shall, in determining the amount of the penalty to be assessed, take into consideration the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously

assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and other factors as justice may require.

Section 113(e)(2) of the Act allows the Administrator or the court, as appropriate, to assess a penalty for each day of violation. In accordance with Section 113(e)(2) of the Act, EPA will consider a violation to continue from the date the violation began until the date Respondents establish that they have achieved continuous compliance. If Respondent proves that there was an intermittent day of compliance or that the violation was not continuous in nature, EPA will reduce the penalty accordingly.

Opportunity for Conference

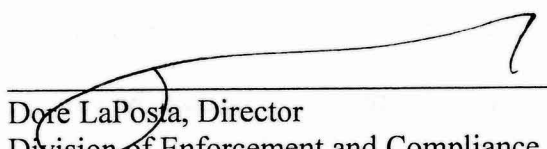
Respondent may request a conference with EPA concerning the violations alleged in this NOV. This conference will enable Respondent to present evidence bearing on the findings of violation, on the nature of the violation, and on any efforts Respondent may have taken or may propose to take to achieve compliance. Respondent may arrange to be represented by legal counsel.

Respondent's request for a conference must be confirmed in writing within ten (10) calendar days of receipt of this NOV. The request for a conference, or other inquiries concerning this NOV, should be made to:

Erick R. Ihlenburg
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 2
Office of Regional Counsel, Air Branch
290 Broadway, 16th Floor
New York, NY 10007-1866
(212) 637-3250

Notwithstanding the effective date of this NOV and opportunity for a conference discussed above, Respondent must comply with all applicable requirements of the Act.

Issued: FEBRUARY 28, 2014



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2

To: Helen P. Revelas, Plant Manager
Ardagh Glass, Inc.
151 East McCanns Boulevard
Elmira, NY 14903

cc: New York State Department of Environmental Conservation
Region 8
6274 E. Avon-Lima Road
Avon, NY 14414

Enclosure 2

CAA § 113

§ 7413.

(a) In general

(1) Order to comply with SIP

Whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of an applicable implementation plan or permit, the Administrator shall notify the person and the State in which the plan applies of such finding. At any time after the expiration of 30 days following the date on which such notice of a violation is issued, the Administrator may, without regard to the period of violation (subject to section 2462 of title 28)—

- (A) issue an order requiring such person to comply with the requirements or prohibitions of such plan or permit,
- (B) issue an administrative penalty order in accordance with subsection (d) of this section, or
- (C) bring a civil action in accordance with subsection (b) of this section.

(2) State failure to enforce SIP or permit program

Whenever, on the basis of information available to the Administrator, the Administrator finds that violations of an applicable implementation plan or an approved permit program under subchapter V of this chapter are so widespread that such violations appear to result from a failure of the State in which the plan or permit program applies to enforce the plan or permit program effectively, the Administrator shall so notify the State. In the case of a permit program, the notice shall be made in accordance with subchapter V of this chapter. If the Administrator finds such failure extends beyond the 30th day after such notice (90 days in the case of such permit program), the Administrator shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Administrator that it will enforce such plan or permit program (hereafter referred to in this section as "period of federally assumed enforcement"), the Administrator may enforce any requirement or prohibition of such plan or permit program with respect to any person by—

- (A) issuing an order requiring such person to comply with such requirement or prohibition,

- (B) issuing an administrative penalty order in accordance with subsection (d) of this section, or

- (C) bringing a civil action in accordance with subsection (b) of this section.

(3) EPA enforcement of other requirements

Except for a requirement or prohibition enforceable under the preceding provisions of this subsection, whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any other requirement or prohibition of this subchapter, section 7603 of this title, subchapter IV—A, subchapter V, or subchapter VI of this chapter, including, but not limited to, a requirement or prohibition of any rule, plan, order, waiver, or permit promulgated, issued, or approved under those provisions or subchapters, or for the payment of any fee owed to the United States under this chapter (other than subchapter II of this chapter), the Administrator may—

- (A) issue an administrative penalty order in accordance with subsection (d) of this section,
- (B) issue an order requiring such person to comply with such requirement or prohibition,
- (C) bring a civil action in accordance with subsection (b) of this section or section 7605 of this title, or
- (D) request the Attorney General to commence a criminal action in accordance with subsection (c) of this section.

(4) Requirements for orders

An order issued under this subsection (other than an order relating to a violation of section 7412 of this title) shall not take effect until the person to whom it is issued has had an opportunity to confer with the Administrator concerning the alleged violation. A copy of any order issued under this subsection shall be sent to the State air pollution control agency of any State in which the violation occurs. Any order issued under this subsection shall state with reasonable specificity the nature of the violation and specify a time for compliance which the Administrator determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. In any case in which an order under this subsection (or notice to a violator under paragraph (1)) is issued to a corporation, a copy of such order (or notice) shall be issued to

appropriate corporate officers. An order issued under this subsection shall require the person to whom it was issued to comply with the requirement as expeditiously as practicable, but in no event longer than one year after the date the order was issued, and shall be nonrenewable. No order issued under this subsection shall prevent the State or the Administrator from assessing any penalties nor otherwise affect or limit the State's or the United States authority to enforce under other provisions of this chapter, nor affect any person's obligations to comply with any section of this chapter or with a term or condition of any permit or applicable implementation plan promulgated or approved under this chapter.

(5) Failure to comply with new source requirements

Whenever, on the basis of any available information, the Administrator finds that a State is not acting in compliance with any requirement or prohibition of the chapter relating to the construction of new sources or the modification of existing sources, the Administrator may—

- (A) issue an order prohibiting the construction or modification of any major stationary source in any area to which such requirement applies;¹¹
- (B) issue an administrative penalty order in accordance with subsection (d) of this section, or
- (C) bring a civil action under subsection (b) of this section.

Nothing in this subsection shall preclude the United States from commencing a criminal action under subsection (c) of this section at any time for any such violation.

(b) Civil judicial enforcement

The Administrator shall, as appropriate, in the case of any person that is the owner or operator of an affected source, a major emitting facility, or a major stationary source, and may, in the case of any other person, commence a civil action for a permanent or temporary injunction, or to assess and recover a civil penalty of not more than \$25,000 per day for each violation, or both, in any of the following instances:

- (1) Whenever such person has violated, or is in violation of, any requirement or prohibition of an applicable implementation plan or permit. Such an action shall be commenced
 - (A) during any period of federally assumed enforcement, or
 - (B) more than 30 days following the date of the Administrator's notification under subsection (a)(1) of this section that such

person has violated, or is in violation of, such requirement or prohibition.

- (2) Whenever such person has violated, or is in violation of, any other requirement or prohibition of this subchapter, section 7603 of this title, subchapter IV-A, subchapter V, or subchapter VI of this chapter, including, but not limited to, a requirement or prohibition of any rule, order, waiver or permit promulgated, issued, or approved under this chapter, or for the payment of any fee owed the United States under this chapter (other than subchapter II of this chapter).
- (3) Whenever such person attempts to construct or modify a major stationary source in any area with respect to which a finding under subsection (a)(5) of this section has been made.

Any action under this subsection may be brought in the district court of the United States for the district in which the violation is alleged to have occurred, or is occurring, or in which the defendant resides, or where the defendant's principal place of business is located, and such court shall have jurisdiction to restrain such violation, to require compliance, to assess such civil penalty, to collect any fees owed the United States under this chapter (other than subchapter II of this chapter) and any noncompliance assessment and nonpayment penalty owed under section 7420 of this title, and to award any other appropriate relief. Notice of the commencement of such action shall be given to the appropriate State air pollution control agency. In the case of any action brought by the Administrator under this subsection, the court may award costs of litigation (including reasonable attorney and expert witness fees) to the party or parties against whom such action was brought if the court finds that such action was unreasonable.

(c) Criminal penalties

- (1) Any person who knowingly violates any requirement or prohibition of an applicable implementation plan (during any period of federally assumed enforcement or more than 30 days after having been notified under subsection (a)(1) of this section by the Administrator that such person is violating such requirement or prohibition), any order under subsection (a) of this section, requirement or prohibition of section 7411 (e) of this title (relating to new source performance standards), section 7412 of this title, section 7414 of this title (relating to inspections, etc.), section 7429 of this title (relating to solid waste combustion), section 7475 (a) of this title (relating to

preconstruction requirements), an order under section 7477 of this title (relating to preconstruction requirements), an order under section 7603 of this title (relating to emergency orders), section 7661a (a) or 7661b (c) of this title (relating to permits), or any requirement or prohibition of subchapter IV-A of this chapter (relating to acid deposition control), or subchapter VI of this chapter (relating to stratospheric ozone control), including a requirement of any rule, order, waiver, or permit promulgated or approved under such sections or subchapters, and including any requirement for the payment of any fee owed the United States under this chapter (other than subchapter II of this chapter) shall, upon conviction, be punished by a fine pursuant to title 18 or by imprisonment for not to exceed 5 years, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

- (4) Any person who negligently releases into the ambient air any hazardous air pollutant listed pursuant to section 7412 of this title or any extremely hazardous substance listed pursuant to section 11002 (a)(2) of this title that is not listed in section 7412 of this title, and who at the time negligently places another person in imminent danger of death or serious bodily injury shall, upon conviction, be punished by a fine under title 18 or by imprisonment for not more than 1 year, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

(5)

- (A) Any person who knowingly releases into the ambient air any hazardous air

placed another person in imminent danger of death or serious bodily injury—

- (i) the defendant is responsible only for actual awareness or actual belief possessed; and
- (ii) knowledge possessed by a person other than the defendant, but not by the defendant, may not be attributed to the defendant;

except that in proving a defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to be shielded from relevant information.

- (C) It is an affirmative defense to a prosecution that the conduct charged was freely consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of—

- (i) an occupation, a business, or a profession; or
- (ii) medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent.

The defendant may establish an affirmative defense under this subparagraph by a preponderance of the evidence.

- (D) All general defenses, affirmative defenses, and bars to prosecution that may apply with respect to other Federal criminal offenses may apply under subparagraph (A) of this paragraph and shall be determined by the courts of the United States according to the principles of common law as they may be interpreted in the light of reason and experience. Concepts of justification and excuse applicable under this section may be developed in the light of reason and experience.

- (E) The term "organization" means a legal entity, other than a government, established or organized for any purpose, and such term includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

- (F) The term "serious bodily injury" means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

- (6) For the purpose of this subsection, the term "person" includes, in addition to the entities referred to in section 7602 (e) of this title, any responsible corporate officer.

(d) Administrative assessment of civil penalties

- (1) The Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000, per day of violation, whenever, on the basis of any available information, the Administrator finds that such person—

- (A) has violated or is violating any requirement or prohibition of an applicable implementation plan (such order shall be issued

- (i) during any period of federally assumed enforcement, or

- (ii) more than thirty days following the date of the Administrator's notification under subsection (a)(1) of this section of a finding that such person has violated or is violating such requirement or prohibition); or

- (B) has violated or is violating any other requirement or prohibition of this subchapter or subchapter III, IV-A, V, or VI of this chapter, including, but not limited to, a requirement or prohibition of any rule, order, waiver, permit, or plan promulgated, issued, or approved under this chapter, or for the payment of any fee owed the United States under this chapter (other than subchapter II of this chapter); or

- (C) attempts to construct or modify a major stationary source in any area with respect to which a finding under subsection (a)(5) of this section has been made.

The Administrator's authority under this paragraph shall be limited to matters where the total penalty sought does not exceed \$200,000 and the first alleged date of violation occurred no more than 12 months prior to the initiation of the administrative action, except where the Administrator and the Attorney General jointly determine that a matter involving a larger penalty amount or longer period of violation is appropriate for administrative penalty action.

Any such determination by the Administrator and the Attorney General shall not be subject to judicial review.

(2)

(A) An administrative penalty assessed under paragraph (1) shall be assessed by the Administrator by an order made after opportunity for a hearing on the record in accordance with sections 554 and 556 of title 5. The Administrator shall issue reasonable rules for discovery and other procedures for hearings under this paragraph. Before issuing such an order, the Administrator shall give written notice to the person to be assessed an administrative penalty of the Administrator's proposal to issue such order and provide such person an opportunity to request such a hearing on the order, within 30 days of the date the notice is received by such person.

(B) The Administrator may compromise, modify, or remit, with or without conditions, any administrative penalty which may be imposed under this subsection.

(3) The Administrator may implement, after consultation with the Attorney General and the States, a field citation program through regulations establishing appropriate minor violations for which field citations assessing civil penalties not to exceed \$5,000 per day of violation may be issued by officers or employees designated by the Administrator. Any person to whom a field citation is assessed may, within a reasonable time as prescribed by the Administrator through regulation, elect to pay the penalty assessment or to request a hearing on the field citation. If a request for a hearing is not made within the time specified in the regulation, the penalty assessment in the field citation shall be final. Such hearing shall not be subject to section 554 or 556 of title 5, but shall provide a reasonable opportunity to be heard and to present evidence. Payment of a civil penalty required by a field citation shall not be a defense to further enforcement by the United States or a State to correct a violation, or to assess the statutory maximum penalty pursuant to other authorities in the chapter, if the violation continues.

(4) Any person against whom a civil penalty is assessed under paragraph (3) of this subsection or to whom an administrative penalty order is issued under paragraph (1) of

this subsection may seek review of such assessment in the United States District Court for the District of Columbia or for the district in which the violation is alleged to have occurred, in which such person resides, or where such person's principal place of business is located, by filing in such court within 30 days following the date the administrative penalty order becomes final under paragraph (2), the assessment becomes final under paragraph (3), or a final decision following a hearing under paragraph (3) is rendered, and by simultaneously sending a copy of the filing by certified mail to the Administrator and the Attorney General. Within 30 days thereafter, the Administrator shall file in such court a certified copy, or certified index, as appropriate, of the record on which the administrative penalty order or assessment was issued. Such court shall not set aside or remand such order or assessment unless there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or unless the order or penalty assessment constitutes an abuse of discretion. Such order or penalty assessment shall not be subject to review by any court except as provided in this paragraph. In any such proceedings, the United States may seek to recover civil penalties ordered or assessed under this section.

(5) If any person fails to pay an assessment of a civil penalty or fails to comply with an administrative penalty order—

(A) after the order or assessment has become final, or

(B) after a court in an action brought under paragraph (4) has entered a final judgment in favor of the Administrator,

the Administrator shall request the Attorney General to bring a civil action in an appropriate district court to enforce the order or to recover the amount ordered or assessed (plus interest at rates established pursuant to section 6621 (a)(2) of title 26 from the date of the final order or decision or the date of the final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such order or assessment shall not be subject to review. Any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States enforcement expenses, including but not limited to

attorneys fees and costs incurred by the United States for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of such quarter.

(e) Penalty assessment criteria

- (1) In determining the amount of any penalty to be assessed under this section or section 7604 (a) of this title, the Administrator or the court, as appropriate, shall take into consideration (in addition to such other factors as justice may require) the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation. The court shall not assess penalties for noncompliance with administrative subpoenas under section 7607 (a) of this title, or actions under section 7414 of this title, where the violator had sufficient cause to violate or fail or refuse to comply with such subpoena or action.
- (2) A penalty may be assessed for each day of violation. For purposes of determining the number of days of violation for which a penalty may be assessed under subsection (b) or (d)(1) of this section, or section 7604 (a) of this title, or an assessment may be made under section 7420 of this title, where the Administrator or an air pollution control agency has notified the source of the violation, and the plaintiff makes a prima facie showing that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice, the days of violation shall be presumed to include the date of such notice and each and every day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.

(f) Awards

The Administrator may pay an award, not to exceed \$10,000, to any person who furnishes information or services which lead to a criminal conviction or a judicial or administrative civil penalty for any violation of this subchapter or subchapter III, IV-A, V, or VI of this chapter enforced under this section. Such payment is subject to available appropriations for such purposes as provided in annual appropriation Acts. Any officer,^[3] or employee of the United States or any State or local government who furnishes information or renders service in the performance of an official duty is ineligible for payment under this subsection. The Administrator may, by regulation, prescribe additional criteria for eligibility for such an award.

(g) Settlements; public participation

At least 30 days before a consent order or settlement agreement of any kind under this chapter to which the United States is a party (other than enforcement actions under this section, section 7420 of this title, or subchapter II of this chapter, whether or not involving civil or criminal penalties, or judgments subject to Department of Justice policy on public participation) is final or filed with a court, the Administrator shall provide a reasonable opportunity by notice in the Federal Register to persons who are not named as parties or intervenors to the action or matter to comment in writing. The Administrator or the Attorney General, as appropriate, shall promptly consider any such written comments and may withdraw or withhold his consent to the proposed order or agreement if the comments disclose facts or considerations which indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of this chapter. Nothing in this subsection shall apply to civil or criminal penalties under this chapter.

(h) Operator

For purposes of the provisions of this section and section 7420 of this title, the term "operator", as used in such provisions, shall include any person who is senior management personnel or a corporate officer. Except in the case of knowing and willful violations, such term shall not include any person who is a stationary engineer or technician responsible for the operation, maintenance, repair, or monitoring of equipment and facilities and who often has supervisory and training duties but who is not senior management personnel or a corporate officer. Except in the case of knowing and willful violations, for purposes of subsection (c)(4) of this section, the term "a person" shall not include an employee who is carrying out his normal activities and who is not a part of senior management personnel or a

corporate officer. Except in the case of knowing and willful violations, for purposes of paragraphs (1), (2), (3), and (5) of subsection (c) of this section the term "a person" shall not include an employee who is carrying out his normal activities and who is acting under orders from the employer.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT ON March 3, 2014, I MAILED A TRUE COPY OF THE ATTACHED DOCUMENT BY CERTIFIED MAIL-RETURN RECEIPT REQUESTED, ARTICLE NUMBERS 7005-3110-0000-5947-3092 POSTAGE PRE-PAID, UPON THE FOLLOWING PERSON(S):

**Helen P. Revelas, Plant Manager
Ardagh Glass, Inc.
151 East McCanns Boulevard
Elmira, New York 14903**

Geraldo Villaran

bcc: A. Sexton-Sims, 2DECA-ACB
G. LaVigna/K. Eng, 2DECA-ACB
E. Ihlenburg, 2ORC-Air
J. Siegel, 2ORC-Air
S. Froikin, OECA-AED
K. McClintock, EPA R10
ORC-Air Chron File

